

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>CAESAR RODNEY EDUCATION</b>	)	
<b>ASSOCIATION, DSEA/NEA,</b>	)	<b>PERB REVIEW OF</b>
	)	<b>EXECUTIVE DIRECTOR'S</b>
Charging Party,	)	<b>DECISION</b>
	)	
v.	)	
	)	<b><u>ULP No. 02-06-360</u></b>
<b>BOARD OF EDUCATION OF THE</b>	)	
<b>CAESAR RODNEY SCHOOL DISTRICT,</b>	)	
	)	
Respondent.	)	

Appearances  
*Jeffrey M. Taschner, Esq., DSEA, for CREA, DSEA/NEA*  
*Catherine T. Hickey, Esq., Schmittinger & Rodriguez, for CR School District*

**BACKGROUND**

The Caesar Rodney School District ("District") is a public employer within the meaning of 14 Del.C. Section 4002(n), of the Public School Employment Relations Act, 14 Del.C. Chapter 40 (1983) ("PSERA" or "Act").

The Caesar Rodney Education Association, DSEA/NEA ("Association") is an employee organization within the meaning of Section 4002 (h) of the Act and the exclusive bargaining representative of certain employees of the District within the meaning of Section 4002(i) of the Act.

On June 19, 2002, the Association filed an unfair labor practice charge alleging the District unilaterally altered the status quo of a mandatory subject of bargaining in violation of Section 4007 (a)(5) of the Act. Specifically, the Association asserted the District failed or refused to process a grievance concerning the termination of a bargaining unit employee to binding arbitration as required by Article II of the parties' collective bargaining agreement.

On July 22, 2002, the District filed its Answer and New Matter. The Association filed its Response to New Matter on July 29, 2002. The parties agreed that a hearing was not necessary in this matter.

On August 30, 2002, the Executive Director rendered his decision based upon the pleadings and a subsequent written position statement filed by the District. He reached the following conclusions of law:

- The grievance procedure is a "term and condition of employment" as defined by 14 Del.C. §4002(r) over which the public school employer and the exclusive bargaining representative are obligated to collectively bargain under 14 Del.C. §4002(e).
- By refusing to process the grievance filed by the Caesar Rodney Education Association on behalf of employee Michael Hoffman, the District unilaterally altered the status quo as it relates to a mandatory subject of bargaining.
- By unilaterally altering the status quo of a mandatory subject of bargaining, namely the grievance procedure, the District violated 14 Del.C. §4007(a)(5), as alleged.

The Executive Director ordered the District to take the following actions:

- A. Cease and desist from engaging in conduct in dereliction of its duty to collectively bargain in good faith with the exclusive representative of its teachers and paraprofessionals;
- B. Process grievances and to afford grievants and their representatives the hearings or procedures to which they are contractually entitled.
- C. Take the following affirmative actions:
  - 1. Submit the grievance concerning the termination of employee Hoffman to final and binding arbitration where the issue of arbitrability can be properly raised before the arbitrator selected pursuant to the Rules of the American Arbitration Association.
  - 2. Within ten (10) calendar days from the date of receipt of this decision, post the attached NOTICE OF DETERMINATION at each location throughout the District where notices of general interest to bargaining unit employees are normally posted. The Notice shall remain posted for a period of thirty (30) days.

3. Within fifteen (15) calendar days from the date of receipt of this decision, provide the Board with written notice of the terms of the [Arbitration] Award.

On September 10, 2002, the District filed a Request for Review of the Executive Director's Decision and Stay of Decision Pending Review, objecting specifically to the findings that it had violated its duty to bargain in good faith by refusing to process the grievance in question.

The Association filed its response to the District's request on September 19, 2002.

By letter dated September 23, 2002, the parties were advised that the PERB granted the District's request for stay, pending its review of the decision.

The full Public Employment Relations Board conducted a public hearing on October 23, 2002. Counsel for the parties were afforded the opportunity to present oral argument. Each Board member received and reviewed the record created before the Executive Director in its entirety. By unanimous vote, the Board affirmed the Executive Director's findings and order. This is the decision resulting from that meeting.

### **DECISION**

The material facts and background in this case were not in dispute and are set forth in pages 2709 through 2713 of the Executive Director's Decision and are specifically incorporated herein by reference. Caesar Rodney Education Association v. Caesar Rodney School District, Del. PERB, ULP 02-06-360, IV PERB Binder 2709 (2002).

The District argues the question here is one of "grievability" rather than "arbitrability" because the collective bargaining agreement specifically excludes terminated paraprofessionals from access to the grievance procedure. The District asserts the contractual language of Article XIV is clear and unambiguous. The Association disagrees.

It is clear there is an issue requiring contractual interpretation which lies at the core of this charge, namely whether Article XIV excludes terminations of paraprofessionals from the grievance procedure. This Board has long held that its role is not to replace the contractual grievance procedure:

While an unfair labor practice is statutory in origin and raises a question of statutory interpretation to be resolved by the Public Employment Relations Board, an alleged contract violation is proper subject matter only for the negotiated grievance procedure. The unfair labor practice forum is not a substitute for the grievance procedure and the Public Employment Relations Board has no jurisdiction to resolve grievances through the interpretation of contract language. It may, however, be necessary for the Board to periodically determine the status of specific contractual provisions in order to resolve unfair labor practice issues properly before it. Brandywine Affiliate, NCCEA/DSEA/NEA v. Brandywine School District Board of Education, Del. PERB, ULP 85-06-005 (1986).

The parties have negotiated and agreed upon a grievance procedure at Article II of their agreement to be employed when an employee or the Association believes there has been "a violation or inequitable application" of any provision of the agreement. The record in this case clearly establishes that this is the case here.

Further, Article II, Grievance Procedure, also includes a very specific section which sets forth a procedure to be followed when the parties disagree as to whether an issue is subject to the grievance procedure:

Article II, E., Arbitrability

- a. If the parties disagree as to whether a matter is subject to arbitration, either party may request a conference with the other party to discuss the issue of arbitrability without jeopardizing the grievance process.
- b. If the disagreement over arbitrability is not resolved in the conference, the subject of arbitrability will be submitted to arbitration without jeopardy to the grievance at the point arbitrability was raised.

The Public School Employment Relations Act requires, as a mandatory subject of bargaining, public school employers and exclusive bargaining representatives of employees to negotiate and include in their collective bargaining agreements grievance procedures through which bargaining unit employees may appeal the interpretation or application of any term or terms of an existing agreement. 14 Del.C. §4013(c). Once agreed upon, that procedure may not be modified or ignored unless the parties have mutually agreed to do so.

The termination of an employee is the most severe form of discipline an employer can impose. The District's argument that the Executive Director's decision grants a right to paraprofessional employees which was not negotiated again turns on whether the District's interpretation of Article XIV is logical and supportable. The parties have agreed that these types of questions should be presented to an arbitrator.

Therefore, we unanimously affirm the decision of the Executive Director finding the District violated 14 Del.C. §4007(a)(5) by unilaterally altering the status quo of a mandatory subject of bargaining when it failed or refused to process the grievance filed by the Association in accord with the contractual procedures.

**IT IS SO ORDERED.**

/s/Henry E. Kressman  
Henry E. Kressman, Chairman

/s/R. Robert Currie, Jr.  
R. Robert Currie, Jr., Member

/s/Elizabeth Daniello Maron  
Elizabeth Daniello Maron, Esquire

DATED: 12 November 2002